



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

Albany NY 12212-5126

DECISION OF THE BOARD

Mailed and Filed: MARCH 27, 2023

IN THE MATTER OF:

Appeal Board No. 627898

PRESENT: JUNE F. O'NEILL, MEMBER

By decisions filed November 7, 2022 (Appeal Board Nos. 624490 and 624491), the Board rescinded the decisions of the Administrative Law Judge filed June 14, 2022, insofar as they overruled the initial determinations holding the claimant ineligible to receive benefits, effective June 1, 2020 through June 7, 2020, on the basis that the claimant failed to certify for the benefit period within the seven-day period for such certification; and holding the claimant ineligible to receive benefits, effective June 8, 2020 through December 27, 2020, on the basis that the claimant did not comply with registration requirements, and remanded the cases to the Hearing Section for a further hearing and a decision on the remanded issues. The Administrative Law Judge held a telephone conference hearing at which testimony was taken. There was an appearance on behalf of the Commissioner of Labor. The claimant did not appear and participate. By decisions filed January 27, 2023, the Administrative Law Judge sustained the initial determinations.

In Appeal Board Nos. 627897 and 627898, the claimant appeals from the decisions of the Administrative Law Judge filed January 27, 2023, which sustained the initial determinations holding the claimant ineligible to receive benefits, effective June 1, 2020 through June 7, 2020, on the basis that the claimant failed to certify for the benefit period within the seven-day period for such certification; and holding the claimant ineligible to receive benefits, effective June 8, 2020 through December 27, 2020, on the basis that the claimant did not comply with registration requirements.

Our review of the record reveals that the case should be remanded to hold a further hearing. On appeal, the claimant contends that she has a new address

and phone number, and therefore did not receive notice of the remand hearing, or have the opportunity to participate in it. The claimant shall be given a further opportunity to present testimony and evidence, and comply with the directives of the Board's prior remand order.

The claimant shall have the 73 pages of the file that were previously sent to her available for use at the at the further hearing. If the claimant cannot locate these documents, she is directed to contact the Hearing Section at least 5 days before the hearing and request that the file contents be sent to her. The claimant shall also notify the Hearing Section if she did not receive the documents submitted by the Department of Labor prior to the January 27, 2023 hearing. She shall have those additional documents available for reference and use at the remand hearing.

The claimant shall be confronted with the entries on the Call History Report (in evidence as Hearing Exhibit 3), specifically the entries indicating the reasons for the calls that are reported on the document. In addition, the claimant shall be questioned with particularity regarding whether the report accurately reflects the number and frequency of calls she made to the DOL from June 1, 2020 to August 2020, and between on and after August 28, 2020 through December 27, 2020.

The claimant shall also be questioned regarding her testimony that after she filed a new claim in August 2020, she was told that "things were confused" because she had two open claims. Inquiry shall be made as to when this call took place, and what else was said to the claimant during this call.

Since the claimant testified that she made many more calls than are recorded on the Call History Report produced by the Department of Labor, but is unclear about the number of calls she placed, to whom, and when, she is directed to produce telephone records for the period at issue, from June 1, 2020 through December 27, 2020, for the phone or phones she used to contact the Department of Labor.

The claimant shall be confronted with, and offered the opportunity to object to, Hearing Exhibits 4 through 12, which were received into evidence at the January 26, 2023 hearing, at which she did not appear.

The Commissioner of Labor shall be represented at the remand hearing and shall produce Senior Unemployment Insurance Representative Lorraine Melendez, who

testified at the hearing held on January 26, 2023. The claimant is directed to listen to the recording of, or read the transcript of, the hearing held on January 26, 2023, and shall be given the opportunity to cross-examine Ms. Mendez, on the testimony she provided at that hearing.

Further, the Commissioner of Labor representative shall be given the opportunity to cross-examine the claimant on the testimony she provided at the hearing held on June 13, 2022, and any additional testimony she gives at the remand hearing.

All documents produced by the parties, or referenced in the Board's remand, that have not already been received into evidence, shall be received into the record after the appropriate confrontation and opportunity for objection.

The parties are placed on notice that failure to produce the evidence directed by the Board may result in the hearing Judge or the Board taking an adverse inference against that party, and concluding that the evidence not produced would not have supported the party's position.

The hearing Judge may receive into the record any other evidence needed to decide the matter.

Now, based on all of the foregoing, it is

ORDERED, that the January 27, 2023 decisions of the Administrative Law Judge be, and the same hereby are, rescinded; and it is further

ORDERED, that the case shall be, and the same hereby is, remanded to the Hearing Section to hold a hearing on the issues of the claimant's failure to certify for the period beginning June 1, 2020 through June 7, 2020, and failure to register for the period beginning June 8, 2020 through December 27, 2020, upon due notice to all parties and their representatives; and it is further

ORDERED, that the hearing shall be conducted so that there has been an opportunity for the above actions to be taken, and so that at the end of the hearing, all parties will have had a full and fair opportunity to be heard; and it is further

ORDERED, that an Administrative Law Judge shall render a new decision on the

issues, which shall be based on the entire record in this case, including the testimony and other evidence from the original and the remand hearings, and which shall contain appropriate findings of fact and conclusions of law.

JUNE F. O'NEILL, MEMBER